

Bureau of Justice Assistance
Southwest Border Prosecution Initiative Guidelines
(Current as of October 18, 2002)

Open Application Period:

Currently, the application system is in an extended review and comment period. Potential applicants should check the test web site, <http://southwest.ojp.gov> for the latest program status.

Non-Competitive Application Process:

Applications will be reviewed and approved on the basis of their adherence to program guidelines and requirements, in keeping with funding availability. BJA does not intend to use weighted criteria or preferences in funding decisions. Given sufficient funds, all applicants may receive 100% of the calculated dollar amount for total net cases eligible for payment, as determined by the application process. If application amounts exceed available funds, applicants may receive funds on a uniform, pro-rata basis. Each application will receive equal consideration, regardless of its electronic submission date during the open application period.

Eligible Jurisdictions:

A county or state government in Arizona, California, New Mexico, or Texas may participate if it prosecuted or detained a defendant in a federally initiated and declined-referred criminal case that was disposed of between October 1, 2001 and September 30, 2002.

Eligible Applicant:

An applicant may be the Chief Executive Officer (CEO) or an authorized designee of any county in Arizona, California, New Mexico, or Texas, or of the state. CEO's are the highest ranking administrative or elected official of a unit of general government, such as:

- ☐ Governor (for states)
- ☐ President of the County Commissioners or County Executive (for counties)
- ☐ County Judge (for counties in Texas)

Authorized designees are government officials that act on behalf of the CEO. They are empowered to make assurances and certifications on behalf of the jurisdiction. For purposes of this program, the county prosecutor's office is the recommended designee.

Eligible Case:

An eligible case is any federally initiated and declined-referred criminal case that was prosecuted by a state or county prosecutor and disposed of between October 1, 2001 and September 30, 2002. Jurisdictions providing pre-trial detention for eligible case defendants are also eligible for funds. Each defendant represents a separate case. Federally referred cases that are declined and not prosecuted by state or county prosecutors are ineligible.

A case is eligible, regardless of:

- ☐ When the case was declined-referred (i.e., cases referred in FY2001 but not disposed of until FY2002 are eligible).
- ☐ What level, type, or number of criminal offenses was involved (e.g., felonies, misdemeanors, drugs, violent offenses, property, public order, etc.).

- ☐ What the defendant's age or citizenship status was at the time of declination-referral (e.g., juveniles, illegal or legal aliens, etc.)
- ☐ Whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, an accepted federal law enforcement practice, or federal prosecutorial discretion.
- ☐ Whether state or local law enforcement participated with federal authorities in the investigation or arrest (e.g., federal/state task forces, etc.)

Federally Initiated Case:

A federally initiated case results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces (e.g., High Intensity Drug Trafficking Areas (HIDTA), Organized Crime Drug Enforcement Task Forces (OCDETF), etc.)

Federal Declination-Referral:

This is a point in time during a federal investigation when a U.S. Attorney or a federal law enforcement agency decides to no longer pursue federal charges against a defendant (declination) and refers the investigation to a state or local jurisdiction for possible prosecution. There are a number of reasons why criminal cases are declined, including minimal federal interest, insufficient evidence, lack of resources, or lack of criminal intent. For purposes of the SWBPI application, referred cases are eligible regardless of whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, accepted federal law enforcement practice, or federal prosecutorial discretion.

Case Disposition:

For purposes of the SWBPI, case disposition refers to the time between a suspect's arrest and the resolution of the criminal charges through a county or state judicial or prosecutorial process (e.g., dismissals, pleas, trials, etc.). Disposition does not include incarceration time for sentenced offenders, or time spent by prosecutors on judicial appeals.

To complete the online application and determine the maximum payment, eligible cases must be grouped according to the length of case disposition. Maximum payment levels increase in accordance with longer dispositions, to reflect the increased cost of prosecuting and detaining defendants. The four disposition categories are: 0 to 15 days; 16 to 30 days; 31 to 90 days; and more than 90 days.

Payment-per-case:

Each eligible case may receive the following maximum payment, based upon length of disposition and the provision of both prosecution services (50% of maximum payment per case) and pre-trial detention services (50% of maximum payment per case):

- ☐ \$2,500 maximum for each case of 0 to 15 days
- ☐ \$5,000 maximum for each case of 16 to 30 days
- ☐ \$7,500 maximum for each case of 31 to 90 days
- ☐ \$10,000 maximum for each case of 91+ days

Prosecution Services:

To be eligible for 50% of the maximum payment per case, an eligible jurisdiction must have provided one or more of the following for each case:

- ☐ Judicial services (Judges, Commissioners, Hearing Officers, etc.)
- ☐ Prosecution services (District Attorney, County Prosecutor, State's Attorney, etc.)
- ☐ Defense services (Public Defender, Indigent Defense, etc.)

Pre-Trial Detention Services:

To be eligible for 50% of the maximum payment per case, an eligible jurisdiction must have held the defendant on a pre-trial basis in its detention facility.

Electronic Payments:

One-time, electronic payments will be made to each approved applicant, once the application period has closed and the applications have been reviewed and approved by the Bureau of Justice Assistance. For jurisdictions from the FY2000/2001 EOUSA program, payments for costs incurred will be processed and paid on a regular basis until all funds are expended or until September 30, 2003.

U.S. Attorney (USA) Program Participants:

The U.S. Attorneys are no longer accepting invoices from eligible jurisdictions involved in the FY 2000-2001 programs. However, BJA will continue to pay approved expenses through September 30, 2003, in keeping with the original EOUSA guidelines and not to exceed amounts remaining from the original agreements. Jurisdictions must register through this online system and provide current banking information to be eligible for additional payments covered by the original USA agreements. They may also apply for new funding under BJA's program. Registration and banking information is the same for both programs and is required before an application or payment request may be approved and processed.

Use of Funds:

Funds from SWBPI federal payments may be used by applicant jurisdictions for any lawful purpose.

State Criminal Alien Assistance Program (SCAAP):

Jurisdictions that have participated in SCAAP or other federal grant, payment, or reimbursement programs are eligible. The application provides an opportunity to make adjustments to requested funds. BJA is not authorized to pay a county or state government for services for which they are receiving reimbursement, subsidy, or the functional equivalent thereof, through another federal grant program, or other reimbursable agreement with a federal agency, including federal grant programs that indirectly award funds to a county or state government.

Jurisdiction CEO's or their designees must certify that their application does not request funds already reimbursed from other federal sources; or, when combined with other federal sources, does not exceed 100% of the jurisdiction's actual cost of prosecution or pre-trial detention services during FY2002.

Reporting Requirements:

All reporting, certification, and data collection requirements are contained in the online application.